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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,859	09/18/2003	Robert T. Melville	212/518	5764

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,859

Applicant(s)

MELVILLE, ROBERT T.

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5 and 7-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 7-13-06 and this action is final.

Claim Objections

2. Claim 3 is objected to because of the following informalities: it is repeated twice on page 1 and lines 4-5 of the claims and the second of these claims should be deleted. Appropriate correction is required.

Applicant is advised that should claim 3 be found allowable, claim 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3-5 and 7-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations of the first fishing rod aligning itself with drag of a hook and tackle while the boat is trolling in claims 3-5 and 17, is not supported in applicant's disclosure. As seen page 5 lines 15-24 of applicant's disclosure, applicant states the rod holder is maintained in a position parallel to the water by the drag of the hook and tackle while the boat is trolling but does not state that the first fishing rod is aligned with the drag of the hook.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5-6 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,673,507 to Stokes.

Referring to claim 5, Stokes discloses a dual fishing rod holder comprising, a first tube – at 46 or 48, characterized by a proximal section and a distal section – see for example figure 2, the first tube having a bend – see proximate 42 or 42' in figure 2, forming an angle between the

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proximal section and the distal section – see for example figure 2, a fastener – at 22,23,26 and the reel/rod support of 112, coupled to the distal section of the first tube – see figure 2, the fastener couplable to a first fishing rod – at 112, and adapted to engage a reel of the first fishing rod – see for example figure 2, and a second tube – at the other of items 80, coupled to the proximal section of the first tube and at an angle relative to the distal section of the first tube, the second tube adapted to receive a handle of a second fishing pole – see for example figure 2, wherein the proximal section of the first tube is so sized and dimensions to be inserted into a receiver – at 20-36, on a boat – at 100 – see for example figure 2. Stokes does not disclose the fastener allows the first fishing rod to rotate in any direction and to align itself with drag of a hook and tackle while the boat is trolling. However, these are intended use/functional limitations in an apparatus claim and it is deemed that the device of Stokes is capable of performing these functions in that the fastener – at 22-26, holds the fishing rod to the boat as seen in figure 2 and thus allows the fishing rod to be capable of being moved/rotated into differing positions inside the holders – at 112, or alternatively be rotated by movement of the boat/wind or fish striking the fishing line, and the movement of the fishing rod into various positions allows for the rod to be capable of being aligned with drag of a hook and tackle while the boat is trolling as seen in figure 1.

Referring to claim 6, Stokes further discloses the fastener coupled to the distal section of the first tube is adapted to allow at least two degrees of freedom in the first fishing rod when the first fishing rod is coupled to the fastener – see for example figure 2.

Referring to claim 13, Stokes as modified by Rossiter discloses the fastener coupled to the distal section of the first tube is adapted to allow three degrees of freedom in the first fishing rod when the first fishing rod is coupled to the fastener – see for example figure 2.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4, 7-8, 10 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,778,592 to Malmberg in view of U.S. Patent No. 5,662,251 to Rossiter.

Referring to claims 3 and 17, Malmberg discloses a dual fishing rod holder comprising, a tip-down fishing rod holder – at 50,64,72, adapted for insertion into a fishing rod handle receiver – at 51, installed on a boat – see figure 1, the tip-down fishing rod holder being substantially L-shaped – see the combination of items 50,64 in figure 1, and having a proximal end and a distal end – see figure 1, and the tip-down fishing rod holder being secured at its proximal end to the receiver and extending rearwardly and at an angle from the receiver – see for example figures 1-2 and 7-9, a fastener – at 70-76 or – at 94,96, supported from the distal end of the tip-down fishing rod holder by a flexible element – at 80,81 and the portions of 80,81, connected at 64 – see figures 1-3 or – at 62,64,66,68, wherein the fastener is adapted to secure a first fishing rod – at 24,26, and freely suspend the first fishing rod – see for example figures 1-2 and 7-9, and a tip-

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up fishing rod holder – at 64a-76a, coupled to the proximal end of the tip-down fishing rod holder disposed at an angle relative to the first fishing rod holder – see for example figure 1, the tip-up fishing rod holder adapted to securely receive a handle of a second fishing rod and hold the second fishing rod at a substantial angle relative to the first fishing rod – see for example figures 1-2 and 7-9 and column 5 lines 43-47 which describes the fishing rod holders being capable of being placed in positions which are substantially angularly apart with respect to each other, wherein the second fishing rod holder is secured at a distance from the top of the proximal end of the first fishing rod holder – see for example figures 1-2 and 7-9. Malmberg does not disclose the fastener allows the first fishing rod to rotate in any direction and to align itself with drag of a hook and tackle while the boat is trolling. However, these are intended use/functional limitations in an apparatus claim and it is deemed that the device of Malmberg is capable of performing these functions in that the fastener – at 70-76 or 94,96, holds the fishing rod to the boat as seen in figure 1 and thus allows the fishing rod to be capable of being moved/rotated into differing positions inside the holders – at 51 and to be rotated about the pivot points – at 66 and 66a, the movement of the fishing rod into various positions allows for the rod to be capable of being aligned with drag of a hook and tackle while the boat is trolling as seen in figure 1. Malmberg does not disclose the fastener is adapted to engage a reel eye of a first fishing reel connected to the fishing rod. Rossiter does disclose the fastener is adapted to engage a reel eye – at 136, of a first fishing reel connected to the fishing rod – see figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Malmberg and add the fastener engaging the reel eye of Rossiter, so as to allow for reel and rod to be securely held during fishing.

Referring to claim 4, Malmberg discloses a dual fishing rod holder comprising, a first fishing rod support – at 50,64,72, having a proximal section and distal section – see for example figures 1-2, wherein the proximal section is formed at an angle relative to the distal section – see for example figures 1-2, and the proximal section is adapted for insertion into a fishing rod handle receiver – at 51, installed on a boat, a fastener – at 88,90, coupled to the distal section of the fishing rod support – see for example figures 1-2, wherein the fastener is adapted to secure a first fishing rod – at 24, and a fishing rod holder – at 64a-78a, fixedly coupled to and substantially parallel to the proximal section of the fishing rod support – see for example figures 1-2 and 7-9 and column 5 lines 43-47 which describes a fixed connection, the fishing rod holder adapted to securely receive a handle of a second fishing rod and hold the second fishing rod at a substantial angle relative to the first fishing rod – see for example figures 1-2 and 7-9 and column 5 lines 43-47, wherein the second fishing rod holder is secured at a fixed distance from the top of the proximal end of the first fishing rod holder – see for example figures 1-2 and column 5 lines 43-47, which describes the fixed positions of the rod holders. Malmberg does not disclose the fastener allows the first fishing rod to rotate in any direction and to align itself with drag of a hook and tackle while the boat is trolling. However, these are intended use/functional limitations in an apparatus claim and it is deemed that the device of Malmberg is capable of performing these functions in that the fastener – at 70-76 or 94,96, holds the fishing rod to the boat as seen in figure 1 and thus allows the fishing rod to be capable of being moved/rotated into differing positions inside the holders – at 51 and to be rotated about the pivot points – at 66 and 66a, the movement of the fishing rod into various positions allows for the rod to be capable of being aligned with drag of a hook and tackle while the boat is trolling as seen in figure 1.

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Malmberg does not disclose the fastener is adapted to engage a reel eye of a first fishing reel connected to the fishing rod. Rossiter does disclose the fastener – at 120, is adapted to engage a reel eye – at 136, of a first fishing reel connected to the fishing rod – see figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Malmberg and add the fastener engaging the reel eye of Rossiter, so as to allow for reel and rod to be securely held during fishing.

Referring to claim 7, Malmberg as modified by Rossiter discloses the distance from the top of the proximal end of the first fishing rod holder to the second fishing rod holder is fixed – see for example figures 1-2 and 7-9 and column 5 lines 43-47 of Malmberg which describes the rod holders being placed in fixed positions.

Referring to claim 8, Malmberg as modified by Rossiter discloses the flexible member comprises a cord – see at 18 in figure 1 of Rossiter.

Referring to claim 10, Malmberg as modified by Rossiter further discloses the fastener comprises a cord and a hook – see at 116 and 120 in figure 1 of Rossiter.

Referring to claims 14-15, Malmberg as modified by Rossiter discloses the tip-down fishing rod holder/fishing rod support is a formed cylindrical tube – see at 50 and 64 in figures 1-2 of Malmberg, and the tip-up fishing rod holder/fishing rod holder is a straight cylindrical tube – see for example at 64a in figures 1-2 of Malmberg.

Referring to claim 16, Malmberg as modified by Rossiter discloses the flexible member – at 80,81, comprises a strap – see figure 3 of Malmberg.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malmberg as modified by Rossiter as applied to claim 3 above, and further in view of U.S. Patent No.

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4,485,579 to Hawie. Malmberg as modified by Rossiter does not disclose the rod holder is an aluminum or steel cylindrical tube. Hawie does disclose the rod holder is a steel cylindrical tube – see for example column 2 lines 16-38. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Malmberg as modified by Rossiter and add the steel tube of Hawie, so as to allow for the device to be made rigid and durable for repeated use.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malmberg as modified by Rossiter as applied to claim 4 above, and further in view of U.S. Patent No. 4,876,980 to Bell. Malmberg as modified by Rossiter does not disclose the fishing rod support is unitary structured. Bell does disclose the fishing rod support – at 28,38-46, is unitary structured – see for example figures 1-4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Malmberg as modified by Rossiter and add the device being unitary structured of Bell, so as to allow for the device to be easily and quickly manufactured.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stokes as applied to claim 5 above, and further in view of Rossiter. Stokes does not disclose the fastener comprises a cord with a hook. Rossiter does disclose the fastener comprises a cord – at 116 with a hook – at 120 – see figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Stokes and add the fastener of Rossiter, so as to allow for the rod to be securely held in place during use.

Response to Arguments

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6. Regarding claims 5-6 and 13, the Stokes reference US 5673507 does not disclose the fastener allows the first fishing rod to rotate in any direction and to align itself with drag of a hook and tackle while the boat is trolling. However, these are intended use/functional limitations in an apparatus claim and it is deemed that the device of Stokes is capable of performing these functions in that the fastener – at 22-26, holds the fishing rod to the boat as seen in figure 2 and thus allows the fishing rod to be capable of being moved/rotated into differing positions inside the holders – at 112, or alternatively be rotated by movement of the boat/wind or fish striking the fishing line, and the movement of the fishing rod into various positions allows for the rod to be capable of being aligned with drag of a hook and tackle while the boat is trolling as seen in figure 1. Further, applicant does not claim that the fishing rods and hook and tackle are aligned with respect to a reference frame and therefore it is deemed that portions of the various rods as seen in figure 1 can be aligned with one another along a line or plane either straight or angled with respect to each other as seen in figure 1.

Regarding claims 3-4, 7-8, 10 and 14-16 the Malmberg reference US 5778592 does not disclose the fastener allows the first fishing rod to rotate in any direction and to align itself with drag of a hook and tackle while the boat is trolling. However, these are intended use/functional limitations in an apparatus claim and it is deemed that the device of Malmberg is capable of performing these functions in that the fastener – at 70-76 or 94,96, holds the fishing rod to the boat as seen in figure 1 and thus allows the fishing rod to be capable of being moved/rotated into differing positions inside the holders – at 51 and to be rotated about the pivot points – at 66 and 66a, the movement of the fishing rod into various positions allows for the rod to be capable of being aligned with drag of a hook and tackle while the boat is trolling as seen in figure 1.

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Further, applicant does not claim that the fishing rods and hook and tackle are aligned with respect to a reference frame and therefore it is deemed that portions of the various rods as seen in figure 1 can be aligned with one another along a line or plane either straight or angled with respect to each other as seen in figure 1. Further, the Rossiter reference US 5662251 is used to disclose the fastener and not the intended use of the device or the aligning of the rod with the hook and tackle and therefore these arguments are moot.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890.

The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David Parsley
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Art Unit 3643



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